IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 8072 of 2004

Suresh @ Pappu Kalani ..Petitioner

vs.

1. Returning Officer
55, Ulhasnagar Legislative
Assembly Constituency
Ulhasnagar and others ..Respondents

Shri Y.S.Jahagirdar, Sr.Advocate with Shri L.M.Acharya for petitioner.
Shri V.P.Malvankar,A.G.P. for respondents.

CORAM: A.P.SHAH &
S.C.DHARMADHIKARI JJ.
5th October, 2004

P.C.

1. Heard Advocates.

2. By this petition, the petitioner is seeking to challenge the order dated 27th September, 2004 passed by the Returning Officer, Ulhasnagar Assembly Constituency, District Thane. The petitioner is also seeking a declaration that Clauses 13.1 and 13.2 contained in Handbook for Returning Officer issued by the Election Commission of India are ultra vires section 33(4) of the Representation of People Act, 1951. The petitioner is the contesting candidate in Ulhasnagar Legislative Assembly Constituency having been

sponsored by Republic Party of India (Athawale) with the symbol as "Lock and Key". Respondent No. 6 also filed his nomination paper in Ulhasnagar Constituency on 22nd September, 2004. It appears that respondent no. 6 made a request in writing to the Returning Officer for changing his name from Ramkripal Kadedin Yadav to Suresh alias Pappu Kalani. Along with the application, the respondent no.6 submitted the gazette notification of the Government of Maharashtra dated 22nd July, 2004 recording change in his name from Ramkripal Kadedin Yadav to Suresh alias Pappu Kadedin Kalani. The Returning Officer in exercise of his power under sec.33(4) read with paras 13.1 and 13.2 of Chapter VI of the Handbook acceded to the request made by respondent no.6. The main contention of the petitioner is that it was not open for the Returning Officer to go beyond the entry in the Electoral Roll which has become conclusive and final and purported change in the name of respondent no.6 from Ramkripal Kadedin Yadav to altogether a new name i.e. Suresh alias Pappu Kalani was wholly illegal and improper. The application made by respondent no.6 was with ulterior motive and was not a genuine request. Reliance is placed on certain newspaper extracts that in Ulhasnagar constituency B.J.P. candidate

is directly pitted against one Shri Suresh @ Pappu Kalani (petitioner) and all other candidates are insignificant in the fray. It is contended that respondent no.6 deliberately changed the name so as to marthe chances of the petitioner in the election.

3. Shri Malvankar, learned A.G.P. raised a preliminary objection to the maintainability of the petition on the ground that the petition is barred by Article 329(b) of the Constitution of India. Reliance was placed on the decision of the Supreme Court in N.P.Ponnuswamy Vs.Returning Officer,Namakkal Constituency A.I.R.1952 S.C.64. The law laid down by the Supreme Court in Poonuswami's case can be summarised as follows:

> "(1)Having regard to the important functions which the Legislatures have to perform in democratic countries, it has always been recognised to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings

may not be unduly retarded or protracted.

(2) In conformity with this principle, the scheme of the election law in this country as well as in England is that no significance should be attached to anything which does not affect the "election" and if any irregularities are committed while it is in progress and they belong to the category or class which under the law by which elections are governed, would have the effect of vitiating the "election": and enable the person affected to call it inquestion, they should be brought up before a special tribunal by means of an election petition and not be made the subject of a dispute before any court while the election is in progress."

4. Shri Malvankar, learned A.G.P. also referred to Anuggrah Narain Singh Vs. State of U.P., (1996) 6 SCC 303 where the Court quashed certain interim orders and observed that if election is imminent or well under way, the Court should not intervene to stop the election process. If this is allowed to be done, no election will ever take place because someone or the other will always find some excuse

to move the Court and stall the elections. Shri Malvankar also relied upon the case of C.Subramanyam Vs.K.Ramanjaneyulu; (1998) 8 SCC 703 where the Supreme Court has held that non compliance of a provision of the Act governing the elections being a ground for an election petition, the writ petition under Article 226 of the Constitution of India should not have been entertained.

5. Shri Jahagirdar, learned Counsel appearing for the petitioner, however, relying upon the decision of the Constitution Bench in Mohinder Singh Gill Vs. The Chief Election Commissioner, New Delhi; AIR 1978 S.C.851, contended that there may be special situation where the Court can exercise jurisdiction under Article 226. Mr.Jahagirdar is right that Mohinder Singh Gill's case lays down that there may be few controversies which may not attract the wrath of Article 329(b), for example, repository of power may act in breach of law or arbitrarily or malafide or the dispute raised may not amount to calling in question an election if it subserves the progress of the election and facilitates the completion of election. We fail to see how the present case would fall in any of the exceptions recognised in Mohinder Singh Gill's

case. In the present case, the petitioner is questioning the order of the Returning Officer permitting the candidate to change his name as per the gazette notification and it is difficult to accept that the case would be covered by any of the exceptions in Mohinder Gill’s case.

6. Shri Jahagirdar also relied upon the observations in para 21 of Lahoti J., as His Lordship then was, in Election Commission of India Vs,. Ashokkumar, A.I.R.2000 S.C.2977 which are as follows:

> "A third category is not for to visualise, Under Section 81 of the Representation of the People Act, 1951 an election petition cannot be filed before the date of election, i.e. the date on which the returned candidate is declared elected. during the process of election something may have happened which would provide a good ground for the election being set aside. Purity of election process has to be preserved. One of the means for achieving this end is to deprive a returned candidate of the success secured by him by restoring to means and methods falling foul of the law of

elections. But by the time the election petition may be filed and judicial assistance secured material evidence may be lost. Before the result of the election is declared assistance of Court may be urgently and immediately needed to preserve the evidence without in any manner intermeddling with or thwarting the progress of election. So also there may be cases where the relief sought for may not interfere or intermeddle with the process of the election but the jurisdiction of the Court is sought to be invoked for correcting the process of election taking care of such aberrations as can be taken care of only at that moment failing which the flowing stream of election process may either stop or break its bounds and spill over. The relief sought for is to let the election process proceed in conformity with law and the facts and circumstances be such that the wrong done shall not be undone after the result of the election has been announced subject to overriding consideration that the Court's intervention shall not interrupt, delay or postpone the ongoing election proceedings. The facts of the case at hand provide one

> such illustration with which we shall deal with a little later. We proceed to refer a few other decided cases of this Court cited at the Bar."

7. We do not think that the above observations have any application to the facts and circumstances of the case. We are of the opinion that the remedy of the petitioner is to file an election petition in accordance with the provisions of Representation of People Act. A writ petition under Article 226 is clearly not maintainable. Hence, petition is dismissed.